

**MINUTES  
of the  
FIFTH MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**October 30-31, 2014  
Akela Flats and Las Cruces**

The fifth meeting of the Indian Affairs Committee was called to order at 10:35 a.m. by Senator John Pinto, co-chair, on Thursday, October 30, 2014, at the Fort Sill Apache offices at Akela Flats, New Mexico.

**Present**

Sen. John Pinto, Co-Chair  
Rep. Eliseo Lee Alcon  
Rep. Alonzo Baldonado (10/30)  
Rep. James Roger Madalena  
Sen. Richard C. Martinez  
Rep. Jane E. Powdrell-Culbert (10/31)  
Sen. Nancy Rodriguez  
Sen. Benny Shendo, Jr.  
Sen. William P. Soules

**Advisory Members**

Rep. Ernest H. Chavez  
Rep. Georgene Louis  
Sen. Cisco McSorley  
Rep. Patricia Roybal Caballero

**Absent**

Rep. Sandra D. Jeff, Co-Chair  
Rep. Sharon Clahchischilliage  
Rep. Patricia A. Lundstrom  
Sen. Cliff R. Pirtle  
Sen. John C. Ryan

Sen. Carlos R. Cisneros  
Rep. Zachary J. Cook  
Sen. Stuart Ingle  
Sen. Daniel A. Ivey-Soto  
Rep. Antonio "Moe" Maestas  
Rep. Debbie A. Rodella  
Rep. Nick L. Salazar  
Sen. Clemente Sanchez

**Guest Legislators**

Rep. Phillip M. Archuleta (10/31)  
Rep. Rodolpho "Rudy" S. Martinez (10/30)

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Peter Kovnat, Legislative Council Service (LCS)  
Mark Edwards, LCS  
Michelle Jaschke, LCS

## **Thursday, October 30 — Fort Sill Apache Offices — Akela Flats**

Senator Pinto welcomed the committee and asked the committee members to introduce themselves. Representative Madalena was asked to be acting co-chair. Leland Michael Darrow, tribal historian and secretary-treasurer, Fort Sill Apache Tribe, gave an invocation in the traditional Chiricahuan Apache dialect.

### **Welcome and Status Update — Fort Sill Apache Tribe**

Jeff Houser, chairman, Fort Sill Apache Tribe, welcomed the committee to the Fort Sill Apache lands at Akela Flats. Mr. Houser told the committee that this year marks the one hundredth anniversary of the release of the Fort Sill Apaches from captivity by the United States government, and that the tribe held a celebration marking the event in March 2014. He then gave the committee a brief history of the tribe. Mr. Houser noted that while Geronimo is commonly thought of as one of the principal historical Apache leaders, he was not a tribal leader at all, he was a healer, a medicine man. However, when the Mexican army killed his wife and children, Geronimo became a dedicated fighter and an influential advocate for armed resistance to Mexican and American incursions into Apache lands. Mr. Houser said that in 1886, Geronimo, Chiricahuan leader Naiche and their followers surrendered to the United States Army with the understanding that they would be held as prisoners of war for two years. Subsequently, the army sent them and their families to Florida, separating families by holding the women and children in a different prison camp from the men. Up to 50% of the tribal members died of malaria in Florida, eventually prompting the army to move them to camps in Alabama and, in 1894, to the military reservation at Fort Sill, Oklahoma.

Mr. Houser then explained that in the early 1900s, the United States offered to release the Fort Sill Apaches if they would relocate to the Mescalero Apache reservation and give up any claim to a reservation homeland of their own. He said that about two-thirds of tribal members accepted the offer, including Geronimo's then wife and children. While it is thought that the addition of the Fort Sill people helped strengthen the Mescalero Apaches' hold on their reservation land, it came at the cost of diluting the population of Chiricahuan dialect speakers. Today, the Chiricahuan dialect is in danger of disappearing.

Mr. Houser related that the Fort Sill Apaches' current situation is a result of the circumstances of their release in 1914. He said that during captivity, the territorial and state governments of New Mexico would not allow the creation of a reservation homeland for the Fort Sill Apaches. Therefore, upon their release, the remaining Fort Sill Apache families settled upon abandoned farmland allotments around Apache and Fletcher, Oklahoma. The tribe has since been working to return to a homeland in New Mexico. For two generations, its efforts were focused on getting action from the federal government; however, it acquired land at Akela Flats in 2002 and had it moved into trust status.

Responding to a question from a committee member, Mr. Houser said that the Fort Sill Apache Tribe now has a total of 300 acres of land in Oklahoma and New Mexico. However, the

lands are scattered, and only 30 acres are in New Mexico. Not having a cohesive landholding has created problems for the tribe. A major challenge is that the federal Bureau of Indian Affairs has narrowly interpreted the area of "administrative jurisdiction" of the Fort Sill Apache Tribe, resulting in limiting the use of federal funds on the tribe's scattered holdings. The tribe's business headquarters is in Oklahoma.

Turning to the Fort Sill Apache Tribe's current goals and aspirations, Mr. Houser indicated that several members want to return to, and settle their families in, their ancestral home in New Mexico. The key element that will foster a return is job creation. To that end, the tribe has sought to become a gaming tribe in New Mexico. Economic development analyses contracted by the tribe indicate that a casino at Akela Flats will be a job creator for both tribal members and non-Indian residents in the area. However, Mr. Houser said that the Fort Sill Apaches need the federal agencies and the governor to agree to allow the tribe to move forward on a gaming compact, but that getting a decision has been difficult. He told the committee that the tribe filed suit in June 2014 seeking to force the National Indian Gaming Commission to make a determination under the federal Indian Gaming Regulatory Act.

### **Report on Native Veterans' Income Tax Settlement Fund**

Alan Martinez, deputy secretary, Veterans' Services Department, and Elisa Walker-Moran, chief economist, Taxation and Revenue Department (TRD), gave a presentation regarding the repayment of state taxes improperly held from the paychecks of Native Americans while they were on active duty in the United States armed forces. The presenters first gave the committee a brief history of the issue. Pursuant to federal authorizing legislation enacted the previous year, in 1977, the TRD entered into an agreement with the United States Department of Defense (DOD) to have state income taxes withheld from the paychecks of service members. However, when the DOD began to withhold state taxes, either it was unaware or many of the service members themselves were unaware of an exemption for which they were eligible. Active duty military personnel who are Native American and who are domiciled on tribal lands are exempt from state income taxes. In 2007, New Mexico enacted legislation expanding the exemption for New Mexico's state taxes to all active duty service members.

Deputy Secretary Martinez and Ms. Walker-Moran noted that in 2008, Senator Pinto and former Senator Lynda M. Lovejoy introduced legislation prompting a study of the issue of improper withholdings for Native American veterans that had served prior to 2007 and creating a fund to settle withholding claims. The presenters stated that the settlement fund was needed because many service personnel did not become aware of the issue until after the three-year time limit set by the state's statute of limitations. In 2009, the legislature appropriated \$1 million to capitalize the settlement fund. Further appropriations in 2011 and 2014 added an additional \$300,000 to the fund.

Ms. Walker-Moran stated that the initial feasibility study for the settlement program included extensive outreach, including 14 town halls, to determine how many veterans had been affected and by how much. The TRD also had to enter into a new agreement with the DOD's

Defense Finance and Accounting Service to get access to old paycheck records to see what had been withheld. During the course of the settlement program, 1,447 claims were made and 785 were approved. Five approved claims totaling \$19,767 have yet to be paid.

Responding to questions from committee members, the presenters stated that:

- all Native American veterans were encouraged to apply, including those serving prior to 1977, so that the TRD could get an accurate picture of the scope and size of the problem;
- it has typically taken 90 days to process a claim, including checking the DOD records once a claim has been made;
- unapproved claims are typically denied because of improper documentation, but a claimant can always bring forth additional documentation;
- the program has likely paid out all of the high-value claims that could be made; and
- any inappropriate withholding in the last three years can be resolved by having the claimant file an amended tax return, so those claims would not be appropriate for the settlement program.

The presenters concluded by indicating that the settlement program appears to be winding down. The settlement fund is nearly depleted, and not many previously unfiled claims are expected. In response to a question by a committee member, Ms. Walker-Moran stated that the TRD should know if any additional funding is needed for unpaid claims before the end of the 2015 legislative session.

#### **Allocation and Recovery of Access Fees, Charges and Trespass Fines Paid by Electric Distribution Cooperatives to Native American Governmental Entities**

Theresa Becenti-Aguilar, commissioner, District 4, and chair, Public Regulation Commission (PRC), S. Vincent Martinez, chief of staff, PRC, and Cydney Beadles, counsel, PRC, gave a report on the costs of right-of-way (ROW) fees across Native American land and how those costs are passed on to the customers of electric cooperatives. They stated that the report was in response to a request made by the legislature through House Memorial 17 in the 2014 legislative session.

The presenters started by discussing the example of the Jemez Mountains Electric Cooperative, Inc. (JMEC), and the cost recovery mechanism for ROW fees Rate 19. The presenters noted some underlying facts with Rate 19 that make it a seminal case for ROW rates, including that:

- 1) federal law requires that tribes be compensated at a minimum of a fair market value for ROWs through their lands;
- 2) the JMEC has 10 tribes and pueblos in its service area; and
- 3) the JMEC ROWs had been very out-of-date and needed to be renegotiated.

The presenters indicated that during the negotiation process, the JMEC came to realize that the ROWs would be costlier than anticipated and filed a Rate 19 proposal to exclude private holdings within tribal lands. A protest was filed by Ohkay Owingeh, which led to mediation during which it was shown that transmission lines benefit all customers. The result was that the PRC approved a methodology for Rate 19 that recovers ROW costs for transmission-level facilities from all of the customers of an electric cooperative, but only recovers ROW costs for distribution-level facilities from customers who live within the boundaries of the tribal lands of the tribe or pueblo collecting that ROW fee. This methodology was later followed in Rate 27, a similar ROW recovery mechanism for the Continental Divide Electric Cooperative, Inc. (Continental). The presenters noted that the methodology has proven to be controversial for the ROW over the lands of the Pueblo of San Ildefonso, possibly because of the large number of private holdings within the pueblo's boundaries.

At this point, a committee member noted that the ROW fee adjustments were long overdue, stating as an example that the JMEC lines had been running over the lands of the Pueblo of Jemez for many years without compensation. Another committee member said that the issue for the state was probably moot, that the PRC has limited influence on ROW fees and that the approved rates were essentially agreements between the electric cooperatives and the tribal governments.

Noting the sizable and detailed report that the PRC had provided as a handout, a committee member asked the presenters to summarize the situation of electric cooperatives, their customers and the costs of ROWs.

In response, Ms. Beadles noted that all parties should remember that a defining element of an electric cooperative is that the shareholders are the cooperative's customers. This element may place a narrower limit on a cooperative's ability to absorb new costs that a larger utility company would not have. In a similar vein, Commissioner Becenti-Aguilar agreed that the question of equitable fees raises the question of how much customers can pay. However, she went on to note that Rate 19 had made history. Three pueblos followed the example of Ohkay Owingeh and filed their own protests to the original proposal. She said that the PRC had to work hard with the All Indian Pueblo Council and individual tribal government landowners in seeking a balance between them and the electric customers.

The chair then asked for comments on this issue from the representatives or leaders of tribes and pueblos in attendance.

Terry Aguilar, governor, Pueblo of San Ildefonso, stated that his pueblo had originally opposed the methodology adopted by the PRC for Rate 19. In the course of working on the issue, the pueblo met several times with members and nonmembers living on pueblo land, and it eventually decided that it needed to resolve the issue and move on. The Pueblo of San Ildefonso had determined that fair market value for ROW fees would cost \$1.3 million and result in a \$50.00 per home rate increase. To resolve the issue, the pueblo dropped the ROW fee

substantially to allow for a more modest \$5.00 to \$6.00 per home increase. Governor Aguilar stated it is unclear how the PRC will move forward on future ROW issues. He opined that with so many tribes involved within the JMEC and Continental service communities, the PRC may need an inter-governmental process to move forward on rates in the future.

Conroy Chino, lobbyist, Pueblo of Acoma, pointed out similar issues are arising in the ROW negotiations with Continental. He noted that the federal "not less than fair market value" standard was similar to municipality rights under state law. Mr. Chino raised an objection to the PRC approach for cooperatives to recover ROW costs only from their customers within the ROW service area. Mr. Chino said that as a matter of conducting business, cooperatives should be allowed to spread their costs over their entire customer base.

Robert Mora, Sr., governor, Pueblo of Tesuque, commented that the PRC's rate process touched upon the general rights of tribal governments. A committee member followed this comment up by questioning whether the memorial requesting the PRC report had been brought in the proper forum, as the issue might properly be seen as part of the federal-tribal relationship as opposed to the tribal-state relationship.

#### **Discussion of Leasehold Community Assistance Act**

The presentation was postponed and will be addressed at a future Indian Affairs Committee meeting.

#### **Tribal Infrastructure Board Guidelines and Procedures: Anticipated Changes**

Kelly Zunie, deputy secretary, Indian Affairs Department (IAD), Graham Knowles, infrastructure manager, IAD, and Moses Winston, general counsel, IAD, handed out and gave a presentation on revised and updated guidelines for project proposals, project funding and project reporting for the Tribal Infrastructure Project Fund (TIPF) that the Tribal Infrastructure Board (TIB) is expected to adopt.

Mr. Knowles started by listing the sections of the proposed new guidelines in order, noting for each section whether there had been a change in that section from the current guidelines and giving a brief description of changes or new items.

Responding to a question, Mr. Winston stated that the new guidelines are anticipated to be approved on November 10. He said that the IAD has changed its notice procedures due to cost and time considerations. Under the new procedures, the IAD does not post notice in newspapers and uses e-mail lists instead. Also, the IAD will post items like the proposed guidelines on its web site.

A committee member asked a question about the new guidelines in Section 8, Item 7 regarding TIPF recipients for a project that does not get completed within the severance tax bonding time limits and has reverted back to the Severance Tax Bonding Fund. The item prohibits the TIPF recipient from applying for future funding until certain conditions are met. In

a discussion about what time delays this would pose for partially completed projects, Mr. Knowles said that this item might need a modification regarding the completed percentage of a project that has funds reverting.

A general discussion followed on various items in the new guidelines and whether they are new requirements, new proposed scoring priorities or simply a clarification of historical TIPF procedures.

The committee then entered into a discussion on why the TIPF guidelines are trying to conform to the rules for the Colonias Infrastructure Project Fund (CIPF). Committee members noted that the CIPF is a newer construct than the TIPF and that the TIPF has more settled procedures and expectations. Committee members also raised concerns that modeling the TIPF procedures on CIPF procedures may not be appropriate given the government-to-government relationships between the state and sovereign tribal governments.

A committee member then asked a series of questions on how "guidelines and procedures" differ from regulations. Mr. Winston replied that guidelines and procedures do not require a rulemaking process or public hearings. This allows for case-by-case flexibility upon determinations of the TIB. A committee member raised a concern that the flexibility might open the TIB up to challenges on the grounds that its decisions were "arbitrary and capricious".

Several committee members then raised similar concerns about whether the wording of Item #20 allowing "case by case" exceptions was comprehensive enough, and whether the common contract term "acts of god" should be included for extenuating circumstances.

A committee member then asked how the executive order regarding project audits was being viewed and whether the IAD was receiving comments from tribal governments. Mr. Knowles replied that for most capital outlay grantees, the executive order was intended to bring them into compliance with the Audit Act. However, since tribal entities are not subject to the Audit Act, the requirement regarding a single federal audit was included to create an equivalent measure. Mr. Knowles acknowledged that the tribal governments had not been fully informed of the new requirement when it was established. He said that the IAD has decided to be the lead agency for certain items. In these cases, the IAD's chief financial officer looks at federal audit clearinghouse findings and makes a determination regarding the need for additional information or special terms and conditions for the awardee and then consults with the action agency.

A committee member raised an issue about how the single federal audit requirement would work for New Mexico's 54 Navajo Nation chapters. Mr. Knowles stated that even if a Navajo chapter was certified to be a fiscal agent, the single federal audit only applies to the Navajo Nation government in Window Rock, Arizona. Therefore, if a problem develops regarding the federal audit for the Navajo Nation, the individual Navajo Nation chapter will have its project funding held up.

The committee then entered into a general discussion regarding whether:

- 1) the IAD's process of conferring with tribal agencies was sufficiently comprehensive;
  - 2) the Navajo Nation chapters in New Mexico were in jeopardy of losing TIPF funding;
- and
- 3) the IAD has sufficient personnel to meet all of the consulting and liaison duties that it has set for itself under the TIPF process.

Senator Rodriguez asked the IAD to outline each change made to the guidelines and procedures, to outline the new guidelines to tribal governments for review and comment and to report back to the Indian Affairs Committee about the tribes' reactions.

### **Recess**

The committee recessed for a tour of habitation and petroglyph sites created by the ancestors of the Fort Sill Apache people within the Organ Mountains National Monument lands near Akela Flats.

### **Friday, October 31 — American Indian Center, New Mexico State University (NMSU)**

Senator Pinto called the committee to order at 10:00 a.m. He then asked the committee members to introduce themselves and gave an invocation. After the invocation, Senator McSorley requested that his personal appreciation of having the committee meet the previous day at the Fort Sill Apache homelands and for the tour of archaeological sites at the Organ Mountains National Monument be placed on the record.

### **Welcome and Status Update — NMSU American Indian Program**

Dr. Dan Howard, provost, NMSU, and Justin McHorse, director, American Indian Program (AIP), NMSU, welcomed the committee and gave an update on their programs.

Dr. Howard highlighted NMSU's Native American drinking water uranium abatement program. He said that 30% of Navajo households in New Mexico do not have regulated water at their homes and that 12% of Navajo homes have access to water that is contaminated with uranium or heavy metals. NMSU has developed an effective method using special clay tablets for removing uranium from drinking water. However, Dr. Howard said that NMSU is now looking at how to mass produce a product using these tablets with the goals of maximizing its efficiency and making it inexpensive. He remarked that a successful product would not only benefit New Mexico families, but would also have a worldwide impact. He specifically noted the impact that an inexpensive water cleansing product would have in disaster relief operations. Dr. Howard noted that NMSU anticipates that it will take a few years of funding the research on the product to create the best delivery and waste disposal system for it.



A committee member then asked about NMSU's geothermal program. Dr. Howard replied that NMSU has limited geothermal sources for its own use, but the engineering department has a high interest in development research regarding geothermal energy in general.

Regarding the AIP, a committee member noted that several legislators had contributed capital outlay funding to build the American Indian Center where the committee was meeting. The committee member commented that NMSU should maximize the potential for the center as a meeting place for policymakers, including legislative committees, All Indian Pueblo Council meetings and intertribal government meetings. The committee member further suggested that the center increase its displays of Native American art to create a greater dynamic for the center. Dr. Howard agreed with the goals of the comments, but he noted that demand for on campus classroom space at NMSU might limit the potential for government meetings.

Mr. McHorse then proceeded to outline the AIP. He stated that 4.1% of the student population (654 students) at NMSU are Native American. A key mission of the AIP is to help students transition to the college environment. Part of the transition is training on different cultural expectations. Mr. McHorse noted that many students in the program come from cultures where deference to elders and to group decision-making is emphasized. He said that the AIP helps teach these students the habits needed to succeed in college, including looking professors in the eye and asking questions as part of a change to individual initiative instead of the expectation of deference that the students grew up with.

Mr. McHorse also highlighted the advantages that the center provides for transitioning Native American students. Specific features he noted include a kitchen that allows students to cook home-style meals; a mediation room; and a space for business recruitment interviews. He also noted that the center has valuable artwork, and he thanked the legislature for funding a security system to protect it.

Asked by a committee member about anticipated funding requests, Mr. McHorse said that the AIP is working on a budget package with NMSU. He went on to state that the AIP currently has seven work-study employees, a \$43,000 operating budget and a \$75,000 budget for student recruitment. A committee member requested that Mr. McHorse provide him with a breakdown of what part of the AIP budget comes from the university general fund and what is funded through other sources, including grant funding.

The committee then entered into a discussion on proposed changes to the grade point average (GPA) requirements for incoming students. Dr. Bernadette Montoya, vice president, student affairs and enrollment management, NMSU, stated that NMSU currently has a 2.5 GPA requirement for incoming students, but that requirement would increase to 2.75 for 2016. A committee member inquired as to what the perceived need was to change the requirement and requested NMSU to provide data on the average and median GPAs for incoming Native American students.

Dr. Montoya noted that a NMSU internal study indicated that the university would have lost 2% of its incoming freshman class in the last year had the new requirement been in place. She indicated that the data could be broken down by student background and that she would provide that breakdown to the committee when it was ready. Two issues that were raised by committee members regarding the change in GPA requirements were a need to inform students in high school about the change and a concern about dropping enrollment levels and the budget consequences for NMSU. Dr. Montoya said the board of regents would revisit the issue as part of its December meeting on NMSU's Pathway to Baccalaureate program.

Committee members asked how the American Indian Center's budget is developed. Mr. McHorse and Dr. Montoya related that NMSU has a top-down budgeting process for most of its programs, but that there are opportunities for program directors to have input. Dr. Montoya said a challenge is balancing the budget restrictions caused by a large decrease in student enrollment.

A committee member asked about whether the AIP coordinates with the Native American program at the NMSU campus in Grants. Mr. McHorse said there was some coordination between the programs, but that the Grants campus has its own program to promote student retention.

Dr. James J. Hoffman, dean, College of Business, NMSU, and Jeanelle A. Chavez, program specialist, Indian Resource Development program (IRD), NMSU, then gave a presentation about the IRD. Dr. Hoffman stated that he oversees the IRD and underscored that the IRD's student retention efforts include supporting the efforts of students working toward post-graduate degrees.

Ms. Chavez reviewed the three underlying goals of the IRD: 1) triple Native American enrollment by 2020; 2) double Native American graduation by 2020; and 3) ensure that no Native American student drops out due to financial reasons. She noted that NMSU's hotel management program is a good example of a program having success in recruiting Native American student participation. Ms. Chavez then highlighted the Dream Makers/Dream Keepers program (Dream program) as an important element of the IRD plan to reach its recruitment and graduation goals. The Dream program recruits middle and high school students to spend time living on the NMSU campus during summer to acquaint students with the university and allow them to envision a college education as part of their future. In the Dream program, middle school students spend two weeks on campus, and high school students spend six weeks on campus. She said that participation in the Dream program does lead to greater success in college.

A committee member commented that the IRD developed out of a collaboration on agricultural education with the Navajo Agricultural Products Industry (NAPI). Ms. Chavez said that the IRD has continued its relationship with the NAPI, but that the program has grown to include collaborations with many other institutions.

Responding to a question from a committee member, Mr. McHorse explained that the IRD and the American Indian Center are complementary efforts. The IRD focuses on education programs, while the center focuses on student services.

### **Report on New Mexico's Small Lending Industry**

Cynthia Richards, director, Financial Institutions Division (FID), Regulation and Licensing Department (RLD), David Mora, small loan lead examiner, FID, RLD, and David Gee, industry manager, FID, RLD, presented a report on the small lending industry. The report included figures on seven different types of loans provided by the lending industry, including:

- payday loans;
- title loans;
- unsecured installment loans;
- vehicle title secure installment loans;
- secured installment loans;
- tax refund anticipation loans; and
- loans not falling within the definitions of FID guidelines (known as "other loans").

The report includes various statistics for the different types of loan categories, including the number of loans made; the average annual percentage rate (APR) charged for a loan; the number of loans that were paid off; the number of loans that were not repaid and subsequently written off as a loss by the lender; and the number of loans that were renewed, refinanced or extended.

In the ensuing discussion, a number of committee members expressed a concern that the report is confusing. A committee member explained that the concern stems from a need to look at the small lending industry as a whole and see if there may be problems in the industry or gaps in the statutory framework under which it operates.

Ms. Richards acknowledged the issue and noted that a challenge in preparing the report is that the FID relies on self-disclosure from the lending industry. The FID does not conduct customer surveys or investigations to assess the accuracy of the information provided by lenders. When reviewing the report, Ms. Richards said a second challenge arises because the report encompasses so many different lending products. She emphasized that these products serve different purposes; pose different risks for lenders; have different time requirements, terms and conditions; and are subject to different statutory requirements. Therefore, attempting to crosswalk the figures from one category to another is likely to create confusion and an inaccurate picture of the industry.

Responding to various questions regarding the consumer costs of differing loan types, the presenters noted that, unlike other loans, payday loans have a set fee cap instead of a percentage rate. However, because payday loans are limited to 14-day to 35-day repayment periods, the effective average APR is over 322%. Payday loans can be rolled over (renewed with an

additional fee cost); however, the FID does not collect rollover data. The report only includes the total number of payday loans made, so one-time loans and rollover loans are combined in the reported figures.

After a committee member raised a concern that rollover loans would exacerbate an already large APR, the presenters noted that by statute a loan customer may request to resolve a loan through a payment plan. The customer then pays a one-time \$15.50 fee and is given a 130-day minimum repayment plan. Responding to a question from a committee member, the presenters clarified that a lender must disclose the payment plan option to a prospective customer at the time the loan is made, and this disclosure is required to be offered upon a prospective default on a loan.

Comments and concerns raised by committee members included:

- that the report includes data on the average number of loans per customer (5.81 for payday loans), including the median number of loans received. This information helps to determine if a small number of customers with a high average number of loans are skewing the figure, thus creating a false picture of the customer base;
- a concern that the report does not include what percentage of the small loan market is derived from each category (for example, the percentage of small loans that are payday loans); and
- a concern that because the report does not include information on the number of rollover loans made for some lending categories such as payday loans, and ambiguous information on other loan products such as vehicle loans, it is difficult to get an indication of the number of customers that may be caught in a debt trap.

Ms. Richards said she believes that lenders respond within their ability to interpret the reporting requirements, and the FID is trying to clarify what the lenders need to report, but numbers may be skewed due to a lack of understanding between the reporting lenders and the FID. She said that the FID had published a best practices guide for lenders that has helped improve reporting. She indicated that the best practices try to follow the requirements set by the federal consumer protection agency; however, the FID cannot cite those regulations because they are not part of New Mexico's statutes.

A committee member then asked if the FID has the ability to promulgate its own regulations. Ms. Richards stated that she believes this is so. A committee member encouraged the FID to consider promulgating regulations to clarify the picture for the lending industry, noting that statutory process tends to create broad requirements, whereas regulations can be more detailed.

Committee members then discussed some of the data in the report for the loan categories other than payday loans. It was noted that many of the categories reported a large number of loans with an APR exceeding 175%. A committee member raised a particular concern about the

maximum APR reported for a tax anticipation loan (3,287.69%). Responding to a question about this type of loan, the presenters explained that tax anticipation loans are typically made by the tax preparer. A committee member commented that under those circumstances, the lender should have sufficient knowledge about the loan recipient and security for the loan so that the risk to the lender would be negligible. In those circumstances, the member asked, would an APR exceeding 3,200% normally be considered predatory? Ms. Richards allowed that in that circumstance, such an interest rate would be considered predatory.

In closing comments, Ms. Richards noted that the small loan industry contains a systemic risk. Many of its customers cannot receive credit from traditional banks; therefore, the terms and fees are different. She stated a belief that the industry does not suffer from rampant abuse.

A committee member raised a concern that small loan customers can only hurt their credit ratings through the use of these loan products. The member remarked that the industry reports loan defaults to credit bureaus but does not report repaid loans. The member asked if the FID could require lenders to report on "good" customers to the credit bureaus. Ms. Richards answered that the FID currently does not have the statutory authority to do so.

### **Services Provided by First Nations Community HealthSource**

Linda Son-Stone, chief executive officer, First Nations Community HealthSource (First Nations), told the committee that First Nations provides health service support to the urban Native American population in Albuquerque. She said that First Nations operates a health care center and also helps clients with Medicare applications. It has helped over 12,000 clients.

Ms. Son-Stone related that First Nations has a tie to the University of New Mexico and collaborates with local schools and the Four Winds Health Center. She noted that there is a lot of overlap between the populations served by First Nations and the Albuquerque Indian Center (AIC). She said that First Nations offers flu shots at the AIC and would like to provide some behavioral health services there as well.

A committee member asked whether there could be greater possibilities for collaboration between First Nations and the AIC, noting a need for on-site health, behavioral health and traditional health services at the AIC. Ms. Zunie told the committee that following the committee's August meeting at the AIC, the IAD had started meeting with the two organizations on collaboration opportunities.

A committee member noted that with the limited funds available to serve the urban Native American population, there is a critical need to leverage the organizations' respective strengths. Representative Roybal Caballero then offered her assistance in facilitating a dialogue between First Nations and the AIC.

At this point, the acting co-chair noted that the next three agenda items would be presentations on different viewpoints of the same issue and requested that all of the presenters for those items sit at the presenter table in a combined presentation.

**Update on Indian Water Rights Settlement; Stakeholder Perspective on Indian Water Rights Settlement; and a Stakeholder's Perspective of the Aamodt Settlement and Regional Water System**

Scott Verhines, P.E., state engineer, Office of the State Engineer (OSE), and secretary, Interstate Stream Commission (ISC); Amy Haas, acting director, ISC; Arianne Singer, manager, Northern New Mexico Bureau, OSE; Myron Armijo, Native American liaison, OSE; Governor Aguilar; Beverly Duran-Cash, president, Northern New Mexicans Protecting Land, Water, and Rights, Inc. (NNMPLWR); and Dave Neal, vice president, NNMPLWR, gave a presentation to the committee on Indian water rights settlement actions in New Mexico.

First, Mr. Verhines and Ms. Haas gave a presentation on the status of proposed Indian water rights settlements requiring state funding, which is required annually. The OSE and ISC provided a handout to the committee. Referring to the more detailed handout, Ms. Haas stated that there are three settlements in progress and gave a brief outline of where they stand and the anticipated state funding needed for each one as follows.

1) The Navajo water rights settlement in the San Juan River adjudication.

Ms. Haas said that the first phase of the Navajo/Gallup water supply project, which underlies the settlement in this adjudication, has been completed. The federal Bureau of Reclamation's current estimate is that the entire project will cost \$1.08 billion. Thus far, Congress has appropriated \$307.5 million for the project, and the president has recommended an additional \$81 million appropriation for fiscal year 2015.

The federal settlement legislation requires a \$50 million "cost share" for the project, and pursuant to this legislation, New Mexico entered into a cost-share agreement with the Department of the Interior on June 27, 2011. According to the terms of the agreement, New Mexico's unpaid balance will be indexed for inflation beginning in 2017. New Mexico currently has approximately \$7 million left in unmet obligations under the cost-share agreement.

2) The settlement agreement with the Pueblos of Nambé, Pojoaque, Tesuque and San Ildefonso in the *Aamodt* adjudication.

On May 3, 2006, the State of New Mexico, the Pueblos of Nambé, Pojoaque, Tesuque and San Ildefonso, Santa Fe County and the City of Santa Fe entered into a settlement agreement to resolve the claims of the four pueblos regarding the use of water in the Nambé-Pojoaque-Tesuque (N-P-T) stream system. A key component of the settlement is a regional water system to deliver water to pueblo members and non-pueblo residents in the basin. The settlement agreement included a cost-sharing structure for the project.

On December 8, 2010, federal legislation approving the settlement was enacted, and the state has subsequently entered into a cost-sharing agreement pursuant to that legislation. The state's share is \$45.5 million, adjusted for inflation as of October 1, 2006. Ms. Haas indicated that the current estimate is that the state's cost share is approximately \$72 million. She said the state is not obligated to pay its share until 2017, but there are cost incentives within the settlement agreement for the state to pay its share early. So far, the state has contributed \$15 million to the project.

3) The Pueblo of Taos water rights settlement in the Rio Pueblo de Taos/Rio Hondo *Abeyta* adjudication.

Ms. Haas stated that according to the terms of the federal Taos Pueblo Indian Water Rights Settlement Act, enacted in 2010, the total cost of the settlement is \$144.05 million to provide a water development fund and planning, design and construction of water delivery projects. Of that amount, the state is obligated to pay just over \$20 million. She said that among the three settlements, the state has a total outstanding balance of \$81.7 million in cost-share obligations. She said the ISC is proposing that the legislature appropriate \$15 million per year for five years to keep pace with the time limits and incentives in the three settlement agreements.

Governor Aguilar then spoke about the *Aamodt* settlement. He noted that the settlement had important implications for four pueblos and that the process had taken 40 years, culminating in congressional legislation signed by the president. He displayed a map of the N-P-T basin and highlighted for the committee the distribution lines of the planned regional water system for the committee. He noted that there would be a water treatment plant at El Rancho and that the distribution system would start at the Pueblo of San Ildefonso and have lines reaching to the Pueblos of Tesuque, Nambé and Pojoaque and continuing to Bishop's Lodge.

Governor Aguilar said the water treatment plant is being tested at Ottowi Bridge as part of a feasibility study for the whole area. He said that connections to the water system will be available to all residents within pueblo boundaries should they choose to connect to it. He noted that major issues have come up in the planning for the water system, including where to site the treatment plants and distribution lines and how to avoid cultural sites. However, he said these are issues that need to be worked out by the residents of the N-P-T basin. He emphasized that some residents in the N-P-T basin only have access to contaminated ground water for their homes and that the water system is critical to communities in the Pojoaque Valley.

Ms. Duran-Cash and Mr. Neal then offered their perspectives on the *Aamodt* settlement. Ms. Duran-Cash said that NNMPLWR is a nonprofit organization whose goal is to bring everyone together. Mr. Neal placed the settlement in a historical context. He said the process started in 1952, but did not gain traction until the mid-1960s. He stated that in 1964, the issue only concerned surface water, not ground water. He further stated that when the OSE filed suit for a general stream adjudication in 1966, no hydrologic surveys had been completed, nor were

any studies conducted of ground water aquifers in the N-P-T basin. He said that in 1974, the court included ground water into the case on its own authority.

Mr. Neal then listed several issues that he indicated raise concerns about the validity or appropriateness of the settlement, including a question of whether the OSE is required to include the Office of the Attorney General in a determination of water rights; whether the courts inappropriately implemented a historic land standard to determine pueblo water rights other than the previously preferred practically irrigable acreage standard; whether the settlement discussions started in 1971 inappropriately excluded non-Indians; and whether the OSE inadequately provided notice to N-P-T basin residents. He said that the OSE had sent out 7,000 notices in the case to show order or show cause and had posted a notice in the *Albuquerque Journal*. He said, however, that very few residents in the area subscribe to the *Albuquerque Journal*.

Mr. Neal then spoke to the feasibility of the settlement. He said the settlement only includes 2,500 acre-feet of 6,000 acre-feet of water rights for the pueblos, and he questioned where the remaining water will come from. He raised a concern about the enforcement of pumping restrictions on area wells and indicated that the need for a regional water settlement was obviated by an aquifer in the basin containing 55 million acre-feet of water. Mr. Neal concluded that the current settlement is not feasible and that the parties need to work toward a feasible, comprehensive solution.

The chair then asked for comments from the representatives of the other pueblos that are parties to the settlement.

Governor Mora commented that the issue is finally coming to a conclusion. He said that he understood the views stated by non-Indian residents in the area. However, he indicated that the irrigation priorities of the society that had set the early standards had changed over time and had been superseded by domestic water priorities. He stated that the Pueblo of Tesuque is still having discussions with residents upstream in the Bishop's Lodge area and is waiting for one group to respond.

Governor Mora noted that the pueblo has concerns that it is working through as well, including having water for fire protection if there is no stream flow; whether the pueblo will have access to clean surface water for cultural practices and irrigation if it moves off of its well system; and whether its neighbor, Santa Fe County, is adequately planning for sustainable development.

Phillip Perez, governor, Pueblo of Nambé, remarked that commentators should remember that after a long process, the settlement arrived at is ultimately an agreement among the governments of four pueblos, the state and the Congress and president of the United States. He then emphasized that the Pueblo of Nambé is concerned about arsenic levels in the available ground water and that it needs safe, affordable drinking water. He noted that it is very expensive



to remove arsenic to reach the federal Safe Drinking Water Act standards and wondered if basin residents that choose not to connect to the planned water system would be at risk.

The chair then asked for other comments. Adam Liefland, representing the Santa Fe County public works system, stated that the county is committed to the regional water system and to the settlement. He stated that the settlement would bring in 4,000 acre-feet of "new" water into the basin. He said that the county will need to develop a joint powers agreement with the four pueblos in the basin on fire protection and water infrastructure. He said he fully expects that negotiations will be challenging. Mr. Liefland then spoke to what he believes are misconceptions about the water system and settlement. He said that the water system will not serve the city of Santa Fe; however, it will serve other communities within the county. He further stated that beyond the county's commitment to pay for part of the regional water system, the county will pay for the individual connections to houses for residents that choose to connect. Finally, he stated that the county's analysis is that a water delivery system would be easier and less expensive than a water treatment system for contaminated ground water.

Ms. Duran-Cash commented that NNMPLWR members want to be on the same page. However, NNMPLWR disagrees on the cost-benefit analysis regarding the wastewater issue. She further stated that non-Indians in the community feel left out and that government-to-government negotiations have excluded their concerns.

A committee member then asked the OSE staff to comment about the well regulation issue that would decrease pumping from well users in the N-P-T basin accustomed to pumping three acre-feet a year.

Ms. Singer responded to the question, but first noted that she was commissioned by the Office of the Attorney General. She stated that general stream adjudications include water and connected ground water resources. However, in the past, hydrographic surveys did not pay attention to domestic wells. Regarding domestic wells, she said that historically, the OSE had, by regulation, set a standard for three acre-feet. This had been based on the typical needs to irrigate one acre of alfalfa. However, a water right is determined by use, and actual household use is typically .3 acre-feet per year. The presumption that the OSE will use for the N-P-T basin wells will be .5 acre-feet. However, as the court proceeds with the basin adjudication, it will allow domestic users to prove use up to a larger amount; it is not a set line.

A committee member commented that the conflicts stem from the pueblos finally being able to exercise their senior water rights after other residents had set up their own water use system. Governor Aguilar followed this comment with a view that the parties to the settlement need to figure out how to communicate to basin residents what is actually occurring. The settlement is simply executing established law.

The committee entered into a general discussion on whether the concerns raised by N-P-T basin residents stemmed from a lack of knowledge about the settlement, whether there is a need for neighboring communities to have a dialogue about actual water use needs without the overlay

of water rights issues and whether non-Indian residents are adequately taking into account past sacrifices by the pueblos. Charlie Dorame, former governor of the Pueblo of Tesuque, noted that the current issue in the basin is access to clean water. However, the issue a generation ago was an easement for a local highway to connect the valley to rest of the state. He said the pueblo had given up that easement in perpetuity for \$300, for the benefit of everyone.

**Adjournment**

There being no further business, the committee adjourned at 3:45 p.m.